

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

EMILY HUNT, on behalf of herself, all others similarly situated, and on behalf of the general public,

**Plaintiff,**

V.

VEP HEALTHCARE, INC., a corporation;  
and DOES 1 through 100, inclusive.

## Defendants.

Case No. 3:16-CV-04790-VC

**[PROPOSED] ORDER AS MODIFIED  
GRANTING RENEWED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS AND  
COLLECTIVE ACTION SETTLEMENT**

Date: November 30, 2017

Time: 10:00 a.m.

Judge: Hon. Vince Chhabria

Dept.: 2

Action Filed: April 6, 2015  
Trial Date: None Set

**[PROPOSED] ORDER AS MODIFIED GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF CLASS AND  
COLLECTIVE ACTION SETTLEMENT**

Case No 3:16-CV-04790-VC

1       The Court has reviewed the unopposed Renewed Motion for Preliminary Approval of Class  
2 and Collective Action Settlement filed by Plaintiff Emily Hunt. The Court has considered the  
3 Memorandum of Points and Authorities in support of Plaintiff's Unopposed Renewed Motion for  
4 Preliminary Approval of Class and Collective Action Settlement, the Declaration of William Turley  
5 and attached exhibits, the Declaration of Mae Tucker, the Declaration of Kelly Danna and attached  
6 exhibits.

7       The Court's review of this proposed settlement is governed by Federal Rule of Civil  
8 Procedure 23(e). *See Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. April 7, 2016). Under  
9 the requirements of Rule 23(e), generally, courts "determine whether a proposed settlement is  
10 fundamentally fair, adequate, and reasonable." *Cotter*, 176 F. Supp. 3d at 935 (quoting *Hanlon v.*  
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citing *Class Plaintiffs v. City of Seattle*, 955  
12 F.2d 1268, 1276 (9th Cir. 1992))). "It is the settlement taken as a whole, rather than the individual  
13 parts, that must be examined for overall fairness." *Cotter*, 176 F. Supp. 3d at 935 (quoting *Hanlon v.*  
14 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citing *Officers for Justice v. Civil Serv.*  
15 *Comm'n of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982))).

16       "District courts have interpreted Rule 23(e) to require a two-step process for the approval of  
17 class action settlements: 'the Court first determines whether a proposed class action settlement  
18 deserves preliminary approval and then, after notice is given to class members, whether final  
19 approval is warranted.'" *Cotter*, 176 F. Supp. 3d at 935 (quoting *In re High-Tech Emp. Antitrust*  
20 *Litig.*, Case No. 11-CV-02509-LHK, 2014 U.S. Dist. LEXIS 110064, 2014 WL 3917126, at \*3  
21 (N.D. Cal. Aug. 8, 2014) (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,  
22 525 (C.D. Cal. 2004)). At final approval, the Court must balance the following non-exhaustive  
23 factors to evaluate the fairness of the proposed settlement: "the strength of the plaintiffs' case; the  
24 risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class  
25 action status throughout the trial; the amount offered in settlement; the extent of discovery  
26 completed and the stage of the proceedings; the experience and views of counsel; the presence of a  
27

1 governmental participant; and the reaction of the class members to the proposed settlement.” *Cotter*,  
2 176 F. Supp. 3d at 935 (quoting *Hanlon*, 150 F.3d at 1026 (citing *Torrissi v. Tucson Elec. Power Co.*,  
3 8 F.3d 1370, 1375 (9th Cir. 1993)).

4 The standards courts are to follow at the preliminary approval stage are less clear. *Cotter*,  
5 176 F. Supp. 3d at 935. “Some district courts . . . have stated that the relevant inquiry is whether the  
6 settlement ‘falls within the range of possible approval’ or ‘within the range of reasonableness.’”  
7 *Cotter*, 176 F. Supp. 3d at 935 (quoting *In re High-Tech Emp. Antitrust Litig.*, 2014 U.S. Dist.  
8 LEXIS 110064, 2014 WL 3917126, at \*3 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d  
9 1078, 1079 (N.D. Cal. 2007)) (citing *Cordy v. USS—Posco Indus.*, No. 12-553, 2013 U.S. Dist.  
10 LEXIS 108952, 2013 WL 4028627, at \*3 (N.D. Cal. Aug. 1, 2013)). In determining whether the  
11 proposed settlement falls within the range of reasonableness, perhaps the most important factor to  
12 consider is “plaintiffs’ expected recovery balanced against the value of the settlement  
13 offer.” *Id.* (quoting *In re Nat'l Football League Players' Concussion Injury Litig.*, 961 F. Supp. 2d  
14 708, 714 (E.D. Pa. 2014)); *see also Nielson v. Sports Auth.*, No. C-11-4724-SBA, 2012 U.S. Dist.  
15 LEXIS 168226, 2012 WL 5941614, at \*6 (N.D. Cal. Nov. 27, 2012). “Determining whether the  
16 settlement falls in the range of reasonableness also requires evaluating the relative strengths and  
17 weaknesses of the plaintiffs’ case; it may be reasonable to settle a weak claim for relatively little,  
18 while it is not reasonable to settle a strong claim for the same amount.” *Cotter*, 176 F. Supp. 3d at  
19 935.

20 Where the parties reach a settlement before class certification, courts must apply a “higher  
21 standard of fairness.” *Cotter*, 176 F. Supp. 3d at 935-936 (quoting *Hanlon*, 150 F.3d at 1026). This  
22 additional scrutiny is needed to ensure that the interests of the class are adequately protected,  
23 because the agreement has “not [been] negotiated by a court-designated class representative.” *Cotter*,  
24 176 F. Supp. 3d at 935-936.

25 Under this framework, the Court hereby finds and orders as follows:  
26

1. The Court finds on a preliminary basis that the provisions of the Joint Stipulation and Settlement Agreement (hereinafter “Agreement”), filed with the Court on December 1, 2017, are fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

2. For purposes of this Order, the Court adopts all defined terms as set forth in the Agreement.

3. The Court conditionally certifies, for settlement purposes only, the following stipulated collective (referred to in the Parties' Agreement as the "FLSA Collective") described in the Motion for Preliminary Approval:

**All individuals employed by VEP Healthcare, Inc. anywhere in the United States as Physician's Assistants who were eligible to receive productivity pay from April 6, 2012 through May 15, 2017.**

4. The Court certifies, for settlement purposes only, the following stipulated class (referred to the Parties' Agreement as the "California Class") described in the Motion for Preliminary Approval:

All individuals employed by VEP Healthcare, Inc. as Physician's Assistants in the state of California who were eligible to receive productivity pay from April 6, 2011 to May 15, 2017.

5. The Court finds, for settlement purposes only, the requirements of Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(3) are satisfied.

6. This Order, which conditionally certifies a class action for settlement purposes only, shall not be cited in this or any matter for the purpose of seeking class certification, opposing decertification, or for any other purpose, other than enforcing the terms of the Parties' Agreement.

7. The Court finds, for settlement purposes only, the requirements of 29 U.S.C. § 216(b) for conditional certification of an FLSA Collective Action are satisfied.

8. This Order, which conditionally certifies a FLSA collective for settlement purposes only, shall not be cited in this or any matter for the purpose of seeking conditional certification,

1 opposing decertification, or for any other purpose, other than enforcing the terms of the Parties' 2  
Agreement.

3       9.      The Court appoints for settlement purposes only, as the Class/Collective 4  
Representative Emily Hunt.

5       10.     The Court appoints for settlement purposes only, William Turley, David Mara, and 6  
Jill Vecchi of The Turley & Mara Law Firm, APLC, as Class/Collective Counsel for the purposes of 7  
settlement and the releases and other obligations therein.

8       11.     CPT Group, Inc. is appointed as Class Administrator.

9       12.     The Notice of Collective and Class Action Settlement, in the form attached to the 10  
Joint Stipulation and Settlement Agreement as Exhibit 1, is approved.

11       13.     The FLSA Settlement Claim Form and Release of Claims (hereinafter referred to as 12  
the "FLSA Claim Form"), in the form attached to the Joint Stipulation and Settlement Agreement as 13  
Exhibit 2, is approved.

14       14.     The Class Administrator is ordered to mail the Notice of Collective and Class Action 15  
Settlement and FLSA Claim Form to the California Class and FLSA Collective Members as 16  
provided in the Agreement. The Court finds that this Notice is the best notice practicable under the 17  
circumstances and is in compliance with the requirements of Fed. R. Civ. P. 23 and applicable 18  
standards of due process and that, when completed, shall constitute sufficient notice to 19  
Class/Collective Members of the settlement, the Final Approval Hearing, and the right to be 20  
excluded from the settlement.

21       15.     Each Participating California Class and FLSA Collective Member will have forty-five 22  
(45) days after the date on which the Class Administrator mails the Class/Collective Notice to object 23  
to the settlement by mailing a written objection to the Class Action Clerk, United States District 24  
Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 25  
94102. Any Objections shall state: (a) the objecting person's full name, address, and telephone 26  
number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and 27

1 concise terms, the legal and factual arguments supporting the objection; (d) list identifying  
2 witness(es) the objector may call to testify at the Final Approval Hearing; and (e) provide true and  
3 correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing. The  
4 objection will not be valid if it objects only to the appropriateness of the Action or its merits. The  
5 objection and supporting papers must also clearly identify the case name and number (Hunt v. VEP  
6 Healthcare, Inc., Case Number 16-cv-04790).

7       16. Each California Class Member who wishes to be excluded from the settlement shall  
8 sign and mail a written request for exclusion to the Settlement Administrator. The written request for  
9 exclusion must: (a) state the Class Member's name, address, telephone number, and social security  
10 number; (b) state the Class Member's intention to exclude themselves from or opt-out of the  
11 Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or  
12 their lawful representative; and (e) be postmarked no later than forty-five (45) days after the  
13 Settlement Administrator first mails the Notice to the Class.

14       17. Each FLSA Collective Member who wishes to participate in the settlement of the  
15 FLSA Collective claims, will be required to submit the FLSA Claim Form to the Settlement  
16 Administrator within forty-five (45) days of the Notice of Collective and Class Action Settlement  
17 and FLSA Claim Form being mailed out. To be a valid claim submission, the FLSA Claim Form  
18 must be post-marked no later than forty-five (45) days after the Notice and FLSA Claim Form were  
19 mailed out by the Administrator.

20       18. If the Agreement is not finally approved by the Court or for any reason is terminated  
21 or otherwise does not become effective, the following will occur: (1) this Preliminary Approval  
22 Order, and all of its provisions, will be automatically vacated; (2) the case will proceed as if no  
23 settlement has been attempted and notice will be provided to the putative Class/Collective Members  
24 that the settlement will not proceed and that, as a result, no payments will be made; (3) no party shall  
25 be deemed to have waived any claims, objections, rights, or defenses, or legal arguments or  
26 positions, including, but not limited to, objections to class certification and claims and defenses on

1 the merits; (4) no term or draft of the Agreement, or any aspect of the Parties' settlement  
2 discussions, including related documentation, will have any effect or be admissible into evidence for  
3 any purpose in the case or in any other proceeding; and (5) Defendant shall have no obligation to pay  
4 all or any part of the settlement.

5       19. During the Court's consideration of the settlement and pending further order of the  
6 Court, all proceedings in this case, other than proceedings necessary to carry out the terms and  
7 provisions of the Agreement, or as otherwise directed by the Court, are hereby stayed and  
8 suspended.

9       20. The Parties may depart from the dates and procedures if mutually agreed upon and  
10 such departures are not materially different from the terms of this Order.

12       The Court's scrutiny of a proposed settlement is as rigorous at the preliminary approval stage  
13 as at the final approval stage. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1036-37 (N.D. Cal.  
14 2016). In this case, the proposed settlement reflects a steep discount, which would typically be  
15 nearly impossible to justify. Preliminary approval is granted only on the basis of the combination of  
16 highly unusual circumstances in this case, including, among other things, the defendant's showing of  
17 its deteriorating financial condition and inability to pay a more reasonable settlement. Nevertheless,  
18 the discount and multiple rounds of briefing required for preliminary approval will be taken into  
19 account in evaluating the motion for attorney's fees.

20       The proposed timeline from the renewed motion for preliminary approval (Dkt. No. 49 at 42-  
21 43) is modified as follows. The following deadlines reflect seven-day extensions from the dates  
22 listed in the renewed motion, as well as a new date for the fairness hearing based on the Court's  
23 availability.

Defendant's Production of Class/Collective List to Administrator	December 14, 2017
Administrator Sends Settlement Notice to Class/Collective Members	December 21, 2017
Plaintiff Files Motion for Attorney's Fee and Enhancement Award and Motion for Final Approval	January 19, 2018

1	<b>Deadline for Exclusion or to Object to the Settlement</b>	<b>February 4, 2018</b>
2	<b>Filing of Supplemental Brief in Support of Motion for Final Approval to Address Class/Collective Member Response</b>	<b>February 8, 2018</b>
3	<b>Submission of Settlement Administrator's Declaration to the Court</b>	<b>March 1, 2018</b>
4	<b>Final Approval Hearing</b>	<b>March 15, 2018, 10:00 am</b>

5  
6 Date: December 5, 2017

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Honorable Vince Chhabria  
8 United States District Court Judge

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